

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LARRY G. BENEDICT**

Claimant

VS.

# ALPINE CHEMICALS

Respondent

AND

# WAUSAU INSURANCE COMPANIES

Insurance Carrier

Docket No. 169,467

## ORDER

Claimant requested review of the Order and Decision dated March 3, 1997, entered by Administrative Law Judge Kenneth S. Johnson.

## ISSUES

Claimant initially requested penalties for respondent's failure to comply with a preliminary hearing order which required payment of temporary total disability benefits. At the hearing held before Administrative Law Judge Kenneth S. Johnson on February 27, 1997, claimant's counsel announced the real issues before the Judge at that hearing were whether temporary total or temporary partial disability benefits were appropriate and at what rate. In the order dated March 3, 1997, the Administrative Law Judge found claimant was entitled to temporary partial disability benefits payable at \$184.61 per week. Claimant requested the Appeals Board to review that order.

The only issues now before the Appeals Board on this review are:

- (1) Does the Appeals Board have the jurisdiction to review the Administrative Law Judge's order at this stage of the proceeding?
- (2) If the Appeals Board has the jurisdiction to review this matter at this stage of the proceeding, is claimant entitled to temporary total or temporary partial disability compensation and at what rate?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The issue of whether a worker is entitled to temporary total or temporary partial disability benefits is a preliminary hearing issue and subject to K.S.A. 1996 Supp. 44-534a. At this juncture of the proceeding, the Appeals Board does not have the authority to review that issue or the issue of proper rate of payment.

Preliminary hearing appeals are limited by K.S.A. 44-534a to the following issues:

- (1) Whether a worker sustained accidental injury.
- (2) Whether the injury arose out of and in the course of employment.
- (3) Whether notice and written claim were timely made.
- (4) Whether certain defenses apply.

The issues regarding claimant's temporary disability benefits are not listed in K.S.A. 1996 Supp. 44-534a as reviewable issues from a preliminary hearing and neither party contends the Administrative Law Judge lacked the jurisdiction or authority to determine the issues addressed in the March 3, 1997, order. K.S.A. 1996 Supp. 44-534a authorizes the Administrative Law Judge to address temporary disability issues at a preliminary hearing which the February 27, 1997, proceeding became. Although the Appeals Board may not at this time reweigh the evidence presented to the Administrative Law Judge regarding payment of temporary disability benefits, those issues may be reserved by the parties and addressed at the time of final award.

Based upon the above, the Appeals Board finds it lacks jurisdiction at this juncture of the proceeding under both K.S.A. 1996 Supp. 44-534a and K.S.A. 1996 Supp. 44-551

to address the issues regarding temporary disability benefits presented by the parties at this time.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Wichita, KS  
       Larry Shoaf, Wichita, KS  
       Kenneth S. Johnson, Administrative Law Judge  
       Philip S. Harness, Director